

SENATE BILL NO. 61

INTRODUCED BY J. COBB

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE STANDARD DEDUCTION FOR MONTANA INCOME TAX PURPOSES TO BE THE SAME AS THE STANDARD DEDUCTION FOR FEDERAL INCOME TAX PURPOSES; AMENDING SECTIONS 15-30-101 AND 15-30-122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 15-30-101, MCA, is amended to read:

**"15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the ~~taxable~~ tax year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the ~~taxable~~ tax year;

(c) the ~~maximum~~ standard deduction provided in 15-30-122, ~~but unadjusted by 15-30-122(2)~~, in effect on June 30 of the ~~taxable~~ tax year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code, {26 U.S.C. 1362}, is not in effect; and

(c) that is not a disregarded entity.

(4) "Department" means the department of revenue.

(5) "Disregarded entity" means a business entity:



1 (a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in  
2 United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as  
3 those regulations may be labeled or amended; or

4 (b) that is a qualified subchapter S. subsidiary that is not treated as a separate corporation, as provided  
5 in section 1361(b)(3) of the Internal Revenue Code, {26 U.S.C. 1361(b)(3)}.

6 (6) "Dividend" means:

7 (a) any distribution made by a C. corporation out of its earnings and profits to its shareholders or  
8 members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

9 (b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

10 (7) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person,  
11 whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

12 (8) "Foreign C. corporation" means a corporation that is not engaged in or doing business in Montana,  
13 as provided in 15-31-101.

14 (9) "Foreign government" means any jurisdiction other than the one embraced within the United States,  
15 its territories, and its possessions.

16 (10) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in  
17 section 61 of the Internal Revenue Code, {26 U.S.C. 61}, or as that section may be labeled or amended,  
18 excluding unemployment compensation included in federal gross income under the provisions of section 85 of  
19 the Internal Revenue Code, {26 U.S.C. 85}, as amended.

20 (11) "Inflation factor" means a number determined for each tax year by dividing the consumer price index  
21 for June of the tax year by the consumer price index for June 2005.

22 (12) "Information agents" includes all individuals and entities acting in whatever capacity, including  
23 lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all  
24 officers and employees of the state or of any municipal corporation or political subdivision of the state, having the  
25 control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities,  
26 compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits,  
27 and income with respect to which any person or fiduciary is taxable under this chapter.

28 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be  
29 labeled or further amended. References to specific provisions of the Internal Revenue Code mean those  
30 provisions as they may be otherwise labeled or further amended.

1 (14) "Knowingly" is as defined in 45-2-101.

2 (15) "Limited liability company" means a limited liability company, domestic limited liability company, or  
3 a foreign limited liability company as defined in 35-8-102.

4 (16) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

5 (17) "Lottery winnings" means income paid either in lump sum or in periodic payments to:

6 (a) a resident taxpayer on a lottery ticket; or

7 (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

8 (18) (a) "Montana source income" means:

9 (i) wages, salary, tips, and other compensation for services performed in the state or while a resident  
10 of the state;

11 (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise  
12 transferred while a resident of the state, or used or held in connection with a trade, business, or occupation  
13 carried on in the state;

14 (iii) gain attributable to the sale or other transfer of intangible property received or accrued while a  
15 resident of the state;

16 (iv) interest received or accrued while a resident of the state or from an installment sale of real property  
17 or tangible commercial or business personal property located in the state;

18 (v) dividends received or accrued while a resident of the state;

19 (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state  
20 or while a resident of the state;

21 (vii) net income or loss derived from farming activities carried on in the state or while a resident of the  
22 state;

23 (viii) net rents from real property and tangible personal property located in the state or received or  
24 accrued while a resident of the state;

25 (ix) net royalties from real property and from tangible real property to the extent the property is used in  
26 the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state  
27 is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical  
28 location of the property in the state during the royalty period in the tax year and the denominator of which is the  
29 number of days of physical location of the property everywhere during all royalty periods in the tax year. If the  
30 physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in

1 which it was located at the time the person paying the royalty obtained possession.

2 (x) patent royalties to the extent the person paying them employs the patent in production, fabrication,  
3 manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are  
4 received or accrued while a resident of the state;

5 (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties  
6 are received or accrued while a resident of the state;

7 (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

8 (A) derived from a trade, business, occupation, or profession carried on in the state;

9 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of  
10 property located in the state; or

11 (C) taken into account while a resident of the state;

12 (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or  
13 item of income, gain, loss, deduction, or credit:

14 (A) derived from a trade, business, occupation, or profession carried on in the state;

15 (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of  
16 property located in the state; or

17 (C) taken into account while a resident of the state;

18 (xiv) social security benefits received or accrued while a resident of the state;

19 (xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits  
20 received while a resident of the state; and

21 (xvi) any other income attributable to the state, including but not limited to lottery winnings, state and  
22 federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

23 (b) The term does not include:

24 (i) compensation for military service of members of the armed services of the United States who are not  
25 Montana residents and who are residing in Montana solely by reason of compliance with military orders and does  
26 not include income derived from their personal property located in the state except with respect to personal  
27 property used in or arising from a trade or business carried on in Montana; or

28 (ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their  
29 domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located  
30 in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there

1 is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

2 (19) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this  
3 chapter.

4 (20) "Nonresident" means a natural person who is not a resident.

5 (21) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued  
6 or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the  
7 method of accounting upon the basis of which the taxable income is computed under this chapter.

8 (22) "Partner" means a member of a partnership or a manager or member of any other entity, if treated  
9 as a partner for federal income tax purposes.

10 (23) "Partnership" means a general or limited partnership, limited liability partnership, limited liability  
11 company, or other entity, if treated as a partnership for federal income tax purposes.

12 (24) "Pass-through entity" means a partnership, an S. corporation, or a disregarded entity.

13 (25) "Pension and annuity income" means:

14 (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term  
15 is used in section 401 of the Internal Revenue Code<sub>1</sub> {26 U.S.C. 401}, or systematic payments received as the  
16 result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon  
17 the cessation of employment;

18 (b) payments received as the result of past service and cessation of employment in the uniformed  
19 services of the United States;

20 (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are  
21 included in federal adjusted gross income;

22 (d) distributions from individual retirement, deferred compensation, and self-employed retirement plans  
23 recognized under sections 401 through 408 of the Internal Revenue Code<sub>1</sub> {26 U.S.C. 401 through 408}<sub>1</sub> to the  
24 extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

25 (e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular  
26 employment.

27 (26) "Purposely" is as defined in 45-2-101.

28 (27) "Received", for the purpose of computation of taxable income under this chapter, means received  
29 or accrued, and the term "received or accrued" must be construed according to the method of accounting upon  
30 the basis of which the taxable income is computed under this chapter.

1 (28) "Resident" applies only to natural persons and includes, for the purpose of determining liability to  
 2 the tax imposed by this chapter with reference to the income of any ~~taxable tax~~ year, any person domiciled in the  
 3 state of Montana and any other person who maintains a permanent place of abode within the state even though  
 4 temporarily absent from the state and who has not established a residence elsewhere.

5 (29) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the  
 6 Internal Revenue Code, ~~(26 U.S.C. 1362),~~ is in effect.

7 (30) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in  
 8 proportion to their previous holdings.

9 (31) "Tax year" means the taxpayer's ~~taxable tax~~ year for federal income tax purposes.

10 (32) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and  
 11 exemptions provided for in this chapter.

12 (33) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other  
 13 obligation imposed by this chapter and unless otherwise specifically provided does not include a C. corporation."  
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15 **Section 2.** Section 15-30-122, MCA, is amended to read:

16 **"15-30-122. Standard deduction.** ~~(1) A standard deduction equal to 20% of adjusted gross income is~~  
 17 ~~allowed if elected by the taxpayer on a return~~ the inflation-adjusted federal basic standard deduction applicable  
 18 for the taxpayer's federal tax year as provided in 26 U.S.C. 63(c) is allowed, but a standard deduction does not  
 19 include the additional federal standard deduction. The standard deduction is in lieu of all deductions allowed  
 20 under 15-30-121. ~~The minimum standard deduction is \$1,580, as adjusted under the provisions of subsection~~  
 21 ~~(2), or 20% of adjusted gross income, whichever is greater, to a maximum standard deduction of \$3,560, as~~  
 22 ~~adjusted under the provisions of subsection (2). However, in the case of a single joint return of husband and wife~~  
 23 ~~or in the case of a single individual who qualifies to file as a head of household on the federal income tax return,~~  
 24 ~~the minimum standard deduction is twice the amount of the minimum standard deduction for a single return, as~~  
 25 ~~adjusted under the provisions of subsection (2), or 20% of adjusted gross income, whichever is greater, to a~~  
 26 ~~maximum standard deduction of twice the amount of the maximum standard deduction for a single return, as~~  
 27 ~~adjusted under the provisions of subsection (2). The standard deduction may not be allowed to either the husband~~  
 28 ~~or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes~~  
 29 ~~of this section, the determination of whether an individual is married must be made as of the last day of the tax~~  
 30 ~~year unless one of the spouses dies during the tax year, in which case the determination must be made as of the~~

1 ~~date of death.~~

2 ~~———(2) By November 1 of each year, the department shall multiply both the minimum and the maximum~~  
3 ~~standard deduction for single returns by the inflation factor for that tax year and round the product to the nearest~~  
4 ~~\$10. The resulting adjusted deductions are effective for that tax year and must be used in calculating the tax~~  
5 ~~imposed in 15-30-103."~~

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7 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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9 NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the  
10 meaning of 1-2-109, to tax years beginning after December 31, 2006.

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